



February 11, 2019

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: *Ex Parte* Communication: WC Docket No. 10-90**

Dear Ms. Dortch:

On February 7, 2019, Genny Morelli and the undersigned of ITTA met with Suzanne Yelen and Stephen Wang of the Wireline Competition Bureau, and Rodger Woock, Cathy Zima, and Alec MacDonell of the Office of Economics and Analytics (OEA), regarding the *Order* in the above-referenced proceeding, as well as the pending petitions for reconsideration and applications for review of it, and responsive pleadings thereto.<sup>1</sup> Pat Rupich of Cincinnati Bell, Sara Cole of TDS Telecom, and Cha-Chi Fan of OEA participated by telephone.

During the meeting, we emphasized the need for the Commission to hold in abeyance the current July 1, 2019 implementation date for the commencement of broadband performance testing pursuant to the *Order*. ITTA members recognize the need for a rigorous performance testing regime and are intent on compliance with it. However, with the myriad outstanding issues raised in the cited pleadings and numerous others, adherence to the current implementation date runs the significant risk of forcing carriers to devote substantial personnel hours and financial sums to testing standards that may not ultimately be required, in the process diverting such resources from other critical and more certain endeavors such as broadband deployment to unserved and underserved areas. These concerns are compounded by the current widespread unavailability of equipment that most carriers can use in a cost-effective manner to test their networks.<sup>2</sup> As discussed in the meeting, widespread availability of embedded testing

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<sup>1</sup> See *Connect America Fund*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET) (*Order*); see also, e.g., Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 10-90 (Nov. 7, 2018) (ITTA Comments); Petition of USTelecom – The Broadband Association, ITTA – The Voice of America’s Broadband Providers, and the Wireless Internet Service Providers Association for Reconsideration and Clarification, WC Docket No. 10-90 (Sept. 19, 2018) (Joint Petition); Reply of USTelecom, ITTA, and WISPA to Opposition to Petition for Reconsideration and Clarification, WC Docket No. 10-90 (Nov. 19, 2018) (Joint Reply).

<sup>2</sup> The *Order* affords carriers flexibility to employ any combination of MBA testing, off-the-shelf testing, or self-testing. *Order*, 33 FCC Rcd at 6513, para. 9. Such flexibility is designed to “ensure that there is a cost-effective method for conducting testing for providers of different sizes and technological sophistication,” and to “allow the provider to align required performance testing with their established network management systems and operations, making it as easy as possible for carriers to implement the required testing while establishing rigorous testing parameters and standards, based on real-world data.” *Id.* at para. 10.

solutions for deployment and integration into networks may still be a year or more away, and such solutions, in some cases, are projected to be approximately one-quarter of the cost of “Whitebox” solutions. In light of all these factors, we requested that the Commission delay the implementation date until a reasonable amount of time after it has resolved all of the issues subject to the petitions for reconsideration and applications for review, as well as after cost-effective equipment is available in a sufficiently widespread manner so as to realize the Commission’s goals of promoting a rigorous but flexible testing program.<sup>3</sup>

We also addressed numerous of the *Order*’s substantive decisions. With respect to the required number of test subjects, although ITTA appreciates the scaled approach adopted in the *Order*,<sup>4</sup> ITTA supports a reduction in the number of subscribers required to be tested.<sup>5</sup> In this regard, we urged the Commission to rebalance the need to test a reasonable number of subscriber locations with minimizing the burden on providers to find customer locations to be tested, adding additional weight to the latter half of the equation. The absence of doing so could lead to the unreasonable result of carriers offering service at multiple speed tiers having to test as many as 150 locations in a state.<sup>6</sup> Relatedly, we voiced support for extending the duration of each test subject’s participation from two years to five,<sup>7</sup> and called for clarification that CAF recipients are permitted to use the same subscribers for both speed and latency testing.<sup>8</sup>

Regarding testing frequency, we challenged the *Order*’s expansion of the hourly test period from 7-11 PM weeknights to 6 PM – 12 AM nightly,<sup>9</sup> and requested that the *Order* be clarified to reflect that carriers are afforded flexibility as to when within the hour they may conduct hourly testing.<sup>10</sup> Further, we advocated that the Commission reconsider the significant disparity between the frequency of latency and speed testing specified by the *Order*. Not only is the over-reaching frequency of latency testing unduly burdensome in its own right, but the disparity with speed testing frequency increases the burdensomeness of the testing program by requiring carriers to develop separate processes for speed and latency testing.<sup>11</sup> Similarly, we argued that the compliance threshold for latency is unduly exacting, and should be harmonized with the compliance standard for speed, for instance, compliance with 175 percent of the latency standard 95 percent of the time.<sup>12</sup>

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<sup>3</sup> See ITTA Comments at 6-7.

<sup>4</sup> See *Order*, 33 FCC Rcd at 6522, para. 36.

<sup>5</sup> See ITTA Comments at 2-4.

<sup>6</sup> See *id.* at 3.

<sup>7</sup> See *id.* at 4-5.

<sup>8</sup> See Joint Petition at 21-23; Joint Reply at 4-5.

<sup>9</sup> See ITTA Comments at 7-8.

<sup>10</sup> See Joint Petition at 23-24; Joint Reply at 5.

<sup>11</sup> See Joint Petition at 4-9; Joint Reply at 7-9.

<sup>12</sup> See Joint Petition at 10-12; Joint Reply at 9.

Further, with respect to compliance, we requested that the Commission reconsider the *Order*'s overly stringent framework for penalizing non-compliance -- which deals much more harshly with minor performance infractions than a more significant degree of non-compliance with broadband deployment milestones -- and suggested that the performance measures compliance framework align more with that to which broadband deployment milestones are subject.<sup>13</sup> We also advocated that the Commission clarify that it will measure compliance with speed requirements using the applicable CAF-mandated minimum service speed as the frame of reference, rather than the advertised speed.<sup>14</sup>

We also urged clarification that "on-net" servers are suitable for testing and compliance purposes, "FCC-designated IXP" includes any IXP operating in metropolitan areas identified in the *Order*, and that carriers may test to "the nearest internet access point."<sup>15</sup>

Finally, we asked that the Commission set aside the *Order*'s requirement that a carrier temporarily upgrade some customers' speeds for testing purposes where there is an insufficient test population at a certain service level due to too few customers having purchased service at that level. Such a requirement is operationally burdensome, and will lead to customer confusion and a potential loss of the carrier's goodwill when it lowers speeds again following testing.<sup>16</sup> At a minimum, if the Commission does not eliminate this requirement, it should establish a low waiver bar for carriers to demonstrate that they have deployed service at the applicable level in accordance with their buildout requirements.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs  
Vice President, Regulatory Affairs

cc: Suzanne Yelen  
Rodger Woock  
Cathy Zima  
Alec MacDonell  
Stephen Wang  
Cha-Chi Fan

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<sup>13</sup> See Joint Petition at 12-14; Joint Reply at 2.

<sup>14</sup> See Joint Petition at 15-16; Joint Reply at 2.

<sup>15</sup> See Joint Petition at 21; Joint Reply at 3-4.

<sup>16</sup> See ITTA Comments at 8.